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C O N F I D E N T I A L SECTION 01 OF 02 BOGOTA 004636

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SUBJECT: ASSET SEIZURE AND DEMOBILIZATION FUNDING

REF: SECSTATE 64720

Classified By: Ambassador William B. Wood; reason 1.4 (d)

1. (U) This is an Action Request (please see paragraphs 2 and 12) in reply to refTel request for information about Colombian Law 793 of 2002, "La Ley de la Extincion de Dominio."

Summary

2. (SBU) Colombia has two laws that address asset forfeiture and seizure, one criminal (Law 600) and one civil (Law 793). In addition, the draft "Law of Justice and Reparations" currently before Congress contemplates "donations" of legal assets to fund victims' compensation. Criminal seizures under Law 600 are cumbersome and time-consuming, but civil forfeiture under Law 793 is relatively efficient. Once goods are under the GOC's control, however, there is no ready means to liquidate them. Current laws limit how the GOC can use seized assets, so the GOC currently has no plans to use them to fund demobilization of illegal armed groups. The Embassy is encouraging the GOC to identify assets -- forfeited or otherwise government-owned -- that it could quickly liquidate, and examining how the GOC could modify current laws or draft new ones to facilitate liquidation of assets in the future. In addition, the "Law of Justice and Reparations" would, if approved in its current form, allow the GOC to "encourage" wealthy leaders of illegal armed groups entering into demobilization agreements to donate substantial assets to the government which would redistribute them as a form of reparations to victims. ACTION REQUEST: Embassy requests Washington's assistance to help the GOC develop an effective legal mechanism to liquidate seized assets, both legally and illegally acquired by narco-terrorists, and redistribute them to victims of violence. End Action Request and Summary.

Colombian Asset Forfeiture and Seizure Laws

3. (U) Colombia has two laws that address asset forfeiture and seizure: Law 793, which governs civil forfeitures, and Law 600, which regulates criminal seizures. Assets forfeited under Law 600 in narcotics cases as well as assets seized pursuant to Law 793 are turned over to the National Narcotics Affairs Office ("Direccion Nacional de Estupefacientes," or DNE), which uses the assets to subsidize anti-narcotics law enforcement efforts. The Office of the Prosecutor General ("Fiscalia") manages assets seized or forfeited for non-narcotics reasons. The Fiscalia has limited power to dispose of these assets, although it can donate them to specific charitable organizations.

4. (U) The GOC has no comprehensive estimate of its inventory of assets seized in criminal proceedings and forfeitures, although it has records of seized assets currently managed by the DNE and a general, if imprecise, inventory of seized assets held by the Fiscalia. Interagency seizure estimates included in paragraph 5 include only property forfeited civilly.

5. (U) According to the GOC, it has seized assets from civil cases valued at nearly USD 215 million since Law 793 went into effect in December 2002. In 2002, the GOC focused its efforts on five departments and seized assets from the Revolutionary Armed Forces of Colombia (FARC), National Liberation Army (ELN), Popular Liberation Army (EPL), United Self-Defense Forces of Colombia (AUC), and independent narco-trafficking organizations totaling over 235 billion Colombian pesos (nearly USD 83 million). Seizures in 2003 totaled more than 365 billion pesos (over USD 131 million), as the GOC expanded operations into more departments and targeted more narco-traffickers. However, the overwhelming majority of these seizures were of real estate; less than 5 percent of seized assets were liquid.

6. (SBU) The Embassy has not been able to identify a legal basis for GOC disposal/sale of forfeited assets. This poses a severe constraint and helps explain why the assets remain "locked up" in the GOC. The Embassy is doing its own legal

analysis to determine if there is an easy way to remedy this problem. Those from whom assets have been seized would probably fight an amendment to existing legislation. Moreover, narcotraffickers have threatened anyone attempting to put seized assets to productive use. Any sale or disposal of assets would have to be accompanied by appropriate security measures to ensure that the new owner survives the transfer of ownership.

Ad Hoc Seizure Strategy

17. (C) Under the current forfeiture/seizure system, law enforcement and military forces identify financial targets on an ad hoc basis. No strategy exists to establish financial target priorities or systematically develop joint, interagency tactics for attacking them. For most criminal and all civil cases, data goes to Fiscalía prosecutors; however, the Fiscalía's processing is notoriously slow. There is no distinction between terrorists and other criminals under Colombian seizure laws.

Interagency Process

18. (U) Law 793 shifted the burden of proof in civil forfeiture cases from the state to the individual, making all goods illegal unless proven otherwise. The streamlined civil forfeiture proceedings can be completed in 90 days. Unfortunately, procedures for criminal seizures are still cumbersome and excessively bureaucratic; there is no set deadline or hierarchy for criminal cases and decisions take place at the same speed as the corresponding trials. Various law enforcement agencies, as well as the Fiscalía, have authority to initiate seizure proceedings. Depending on the crime, the Ministry of Interior and Justice, the Ministry of Defense, the Inspector General's Office ("Procuraduria"), National Narcotics Affairs Office, and/or the National Comptroller General's Office can be involved in the process.

Demobilization Process

19. (U) Decree 128 of January 2003 outlines the process for providing economic benefits to individuals who demobilize and reincorporate into civilian life, but does not specify the origin of such funds. Current law does not provide for the use of seized assets to fund demobilization, and the GOC has no plans to do so.

110. (U) The proposed "Law of Justice and Reparations" now before the Colombian Congress would require individuals to "donate" assets for victims' compensation as a sign of good faith. GOC officials have told us they assume these donations would come from legal funds, since illicitly obtained assets should be forfeited. Moreover, illicit assets placed in a victims' compensation fund would still be susceptible, in theory, to forfeiture, since the donor would have had no legal right to transfer them.

111. (SBU) Even when assets are immediately and freely transferable, potential recipients often fear retribution from narco-terrorists and are unwilling to receive them. Given such anxieties, and considering the complicated interagency requirements in place for seizures and the minimal liquid assets available from them, the current asset forfeiture system would have to undergo significant changes in order to finance demobilization. The Embassy is encouraging the GOC to identify assets -- forfeited or otherwise government-owned -- that it could quickly liquidate. At the same time, we are looking at how the GOC could modify current laws or draft new ones to enable quick liquidation of assets in the future.

112. (U) ACTION REQUEST: Embassy requests Washington's assistance to help the GOC develop an effective legal mechanism to liquidate seized assets, both legally and illegally acquired by narco-terrorists, and redistribute them to victims of violence. The recommendations should take into account that the proposed legal mechanism would operate in the context of an offer to illegal armed groups to enter into a peace process and demobilize. End Action Request.

WOOD